IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1400 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI JAKSHIBHAI VAGHRAR(PARMAR)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/06/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 7.12.2002, by which he is detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 as a 'Bootlegger'. Along with the detention order, the

petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one registered case against the petitioner, being Guna Register No.763 of 2002, which is filed under the provisions of the Bombay Prohibition Act. The said offence is registered against the petitioner on 13.10.2002.

On behalf of the petitioner, it is submitted that even though the said case is registered as back as on 13.10.2002, the detention orer is passed practically after two months, as it is passed on 7.12.2002. It is also submitted by the learned Advocate for the petitioner that even prior to his detention, he made a representation to the Police Commissioner on 29.10.2002. The said representation is annexed as Annexure 'D', page 27. In the said representation, he made an allegation against the Police Inspector by giving details in such representation. It is submitted that this vital document is submitted before the detaining authority. On the aforesaid ground, it is submitted that the order of detention is required to be set aside. So far as the question of delay in passing the detention order is concerned, learned Advocate has relied upon the decision rendered by a learned single Judge of this Court in Special Civil Application No.5321 of 2002 on 29th August, 2002. In the said decision, this Court (Coram : R.P. Dholakia, J.) has held as under :-

> " ... ...
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> 4. It appears that the last offence is registered against the detenu on 28/3/2002 and the order of detention has been passed on 30/4/2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.
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> ... ..."

The State has filed reply, but the Detaining Authority has not filed any reply, explaining the aforesaid aspect of delay in passing the detention order, though, of

course, Mr.Pancholi, learned AGP, submitted that even though there is no reply, statements of witnesses were recorded at a later point of time. I am not satisfied that any satisfactory explanation for delay is offered by the State. Since the State has filed reply, there is no reason why the detaining authority is unable to file an affidavit-in-reply, explaining the delay. Apart from that fact, even prior to his detention, the petitioner also apprehended such detention as he had some enmity with the Police Inspector of the concerned Police Station. Before the detention order was passed, he already made a representation to the detaining authority, but the detaining authority has not considered the aforesaid aspect at all even in the detention order. Before the detention order was passed, if a detenu has made any representation, apprehending such detention order, it is the duty of the detaining authority to consider such aspect in greater detail, by holding appropriate enquiry. It is the duty of the detaining authority to verify whether the allegation of such person or applicant, by which he has apprehended his detention, is genuine or not, and the detaining authority is bound to reflect such part in the detention order itself. The detaining authority has failed to discharge his duty appropriately and he is cautioned to take appropriate remedial measure in future, if any representation is made by any citizen, in advance, that he is apprehending detention because of enmity with a particular Police Officer. In the instant case, the detaining authority has acted in an absolutely casual manner by not dealing with this important point of the petitioner, by not mentioning about the same in the detention order. This, of course, is a serious lapse on the part of the detaining authority.

Considering the aforesaid aspect of the matter and considering the judgment of the learned single Judge, as referred above, the order of detention is required to be set aside on the aforesaid ground, as a vital document was not taken into consideration by the detaining authority while passing the detention order.

In the above view of the matter, the petition is allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. Rule is made absolute.

4th June, 2003 (P.B. Majmudar, J.)

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(apj)